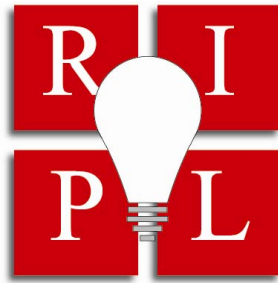


THE JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW



IMPLEMENTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS IN WEST AFRICA

GANIYOU GASSIKIA

ABSTRACT

The World Trade Organization (WTO) created the Trade-Related Intellectual Property Rights (TRIPS) Agreement to monitor and enforce intellectual property rights around the world, to uneven success. There are problems with enforcement in many developing countries, specifically countries in West Africa. By some estimates, for example, the majority of drugs used in those countries are counterfeit, which can lead to serious injury or even death for those using the counterfeit drugs. Stronger IP enforcement not only encourages innovation but can serve to reduce the risk of death of those in developing countries. There are major challenges facing implementation of IP rights in West African countries though. Those include a lack of knowledge or superficial knowledge about IP, lack of understanding of the value of creativity, an understanding of IP law that is limited to copyright law, the degree of poverty combined with the expense of drugs, and the inadequate training of government officials, the legislature, and judges with respect to IP rights. The goal of this article is to suggest some strategies for the implementation and enforcement of the TRIPS Agreement in West Africa, including both what can be done in West African countries as well as developed countries like the United States.

Copyright © 2014 The John Marshall Law School



Cite as Ganiyou Gassikia, Implementing and Enforcing Intellectual Property Rights in West Africa, 13 J. MARSHALL REV. INTELL. PROP. L. 782 (2014).

IMPLEMENTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS IN
WEST AFRICA

GANIYOU GASSIKIA

I. INTRODUCTION	784
II. THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS AND THE CHALLENGES FACED BY DEVELOPING COUNTRIES IN THEIR IMPLEMENTATION	785
A. The Necessity of IPRs Implementation	785
B. Challenges and Issues Related to the Implementation of IPRs	787
III. APPROACH OF SOLUTIONS TO SOLVE IPRs ISSUES IN WEST AFRICA.....	789
A. Solutions on National Level	789
B. International Contribution in Enforcing the TRIPS Provisions in West Africa	791
IV. CONCLUSION	793

IMPLEMENTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS IN WEST AFRICA

GANIYOU GASSIKIA*

I. INTRODUCTION

The enforcement of intellectual property rights has taken a big place in most international trade agreements in the last few decades.¹ The World Trade Organization (WTO), under the influence of the United States and other developed countries, has arrived at the conclusion that the growth of the world economy and the promotion of science and technology will not be easy if inventors and scientists cannot benefit from their creativities.² The non-enforcement of intellectual property rights will affect research and development, which constitutes the locomotive of human progress. In 1994, the WTO created the Trade-Related Intellectual Property Rights (TRIPS) Agreement to monitor and enforce intellectual property rights around the world.³ Despite this institution, the implementation and enforcement of international property rights (IPRs) continues to be a challenge around the world. In order to obtain compliance from developing countries, developed countries require a minimum protection of IPRs as a pre-requisite for investment and transfer of technology.⁴ The developing countries, on the other hand, judge the provisions to be too demanding. They seek for compromise, especially when it comes to health and life threatening diseases.⁵ The World Trade Organization (WTO) has authorized the production of certain drugs after negotiations have failed with the patents owners.⁶ Despite this agreement, the compliance with other TRIPS provisions continues to be a problem in many developing countries, specifically countries in West Africa. There are many economic, social, and political factors that explain the obstacles faced by

* © Ganiyou Gassikia 2014. Ganiyou Gassikia is a LLM graduate in International Business and Trade Law at The John Marshall Law School in Chicago, IL (January 2014). He obtained his LLB at the University of Abomey-Calavi in the Republic of Benin. His areas of interest include international relations and policy, international trade and investment in West Africa. The author would like to thank Professor Tammie Krauskopf whose seminar the paper was written.

¹ Carsten Fink, *Intellectual Property Rights, in* PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT 386 (Jean Pierre Chauffour & Jean Christophe Maur eds., 2011).

² KAMIL IDRIS & HISAITSU ARAI, *THE INTELLECTUAL PROPERTY-CONSCIOUS NATION: MAPPING THE PATH FROM DEVELOPING TO DEVELOPED* 46–8 (2006); *see also Fact Sheet: TRIPS and Pharmaceutical Patents*, WORLD TRADE ORG., Sept. 2006, http://www.wto.org/english/tratop_e/trips_e/factsheet_pharm01_e.htm.

³ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS]; *see also* Fink, *supra* note 1, at 387; *Council for Trade-Related Aspects of Intellectual Property Rights*, OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, <http://www.ustr.gov/trade-agreements/wto-multilateral-affairs/-world-trade-organization/council-trade-related-aspects-in> (last visited May 11, 2014).

⁴ Fink, *supra* note 1, at 387.

⁵ IDRIS & ARAI, *supra* note 2, at 46–7.

⁶ SHAYERAH ILLIAS & IAN F. FERGUSSON, *INTELLECTUAL PROPERTY RIGHTS AND INTERNATIONAL TRADE* 24 (Nova Science Publishers 2008).

developing countries in implementing the TRIPS provisions. The goal of this article is to suggest some strategies for the implementation and enforcement of the TRIPS agreement in West Africa. In the first section, the importance of enforcing IPRs and the challenges faced by developing countries in enforcing them will be discussed. In the second section, some suggestions for enforcement programs will be analyzed.

II. THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS AND THE CHALLENGES FACED BY DEVELOPING COUNTRIES IN THEIR IMPLEMENTATION

A. *The Necessity of IPRs Implementation*

The importance of IP should be analyzed in two analogies. First, countries required to enforce IPRs law must know and accept the values of foreign direct investment (FDI) in their economy. FDI is a major tool for sustainable development.⁷ The power of FDI in economic development is undeniable.⁸ Many governments around the world have the ultimate goals to improve their countries' economies and provide better socio-economic conditions for their citizens.⁹ "The reduction of poverty, the improvement of education and healthcare, and the creation of better infrastructure seem impossible without sound economic growth stimulated through foreign investment."¹⁰ It is noteworthy to mention here the example of China, which used FDI to rise from being a poor country to become an economic super-power.¹¹ FDI has brought China "[t]he advanced technology and management skills" needed for the development of the Chinese economy¹²; thus, FDI has contributed to China for their "integration into the global economy."¹³ Meanwhile, attracting FDI requires the protection and the enforcement of IPRs.¹⁴ Studies show that the protection of IPRs in any country would increase FDI in that country and the transfer of technology.¹⁵ For example, Japan has become one of the developed countries after World War II by, at

⁷ Pierre Sauvé, *Multilateral Rules On Investment: Is Forward Movement Possible?* 9 J. INT'L ECON. L. 325, 348 (2006); see also Julia Kubny et al., *Financing for Development Series: Foreign Direct Investment—A Means to Foster Sustainable Development?*, GERMAN DEV. INST., available at http://www.die-gdi.de/uploads/media/AuS_12.2008.pdf.

⁸ Marija Petrovic-Randjelovic, *Foreign Direct Investment and Sustainable Development: An Analysis of the Impact of Environmental Regulations on Investment Location Decisions*, 4 FACTA UNIVERSITATIS: ECON. & ORG. 183, 184 (2007), available at <http://facta.junis.ni.ac.rs/eao/eao200702/eao200702-10.pdf>.

⁹ Alfred Escher, *Current Developments, Legal Challenges and Definition of FDI*, in LEGAL ASPECTS OF FOREIGN DIRECT INVESTMENT 28 (Kluwer Law Int'l 1999).

¹⁰ *Id.*

¹¹ Yi Li, *Legal and Financial Framework of Promoting FDI in Capital-Importing and Capital-Exporting Countries. (China)*, in LEGAL ASPECTS OF FOREIGN DIRECT INVESTMENT, *supra* note 9, at 288.

¹² Escher, *supra* note 9, at 28.

¹³ *Id.*

¹⁴ SHAHID ALIKHAN & RAGHUNATH MASHELKAR, *INTELLECTUAL PROPERTY AND COMPETITIVE STRATEGIES IN THE 21ST CENTURY* 55 (Kluwer Law Int'l 2d ed. 2009).

¹⁵ *Id.* at 56.

least in part, attracting FDI through a strong patent protection.¹⁶ China also has secured more investment and guaranteed a sustainable development by joining the World Trade Organization (WTO) in 2001.¹⁷ These examples provide that foreign investors are more likely to be attracted to countries where IPRs are reasonably enforced; thus, sustainable development is almost impossible without FDI and technology transfer.

The protection of IPRs will also encourage and promote scientific research. Both in developing countries and the developed world, the essence of protecting the rights of the investors is to encourage research and development (R&D).¹⁸ “The incentive is a time-limited right to gain revenues from the creation by excluding others.”¹⁹ Most developing countries need to understand that the “[r]ecognition of the creator and inventor, protection of their rights and the rights of those who invest in the making of their creations and/or commercialization of their creative products all contribute to sustainable economic growth.”²⁰ An art creator (no matter how small the innovation might be) who receives recognition for what he/she makes and benefits from his/her creation will work to improve and build upon the original products. This will guarantee technological and cultural progress for humanity.²¹ IPRs have become important now more than ever because the lifecycles of products are getting shorter.²² From investors’ perspective, it is important to profit from their investments before the end of the lifecycle of the products invented. Likewise, it is also important that the consumers be introduced to new markets.²³

IPRs can also contribute to the enhancement of the market value of the company by enhancing competition among inventors, thus stimulating economic growth.²⁴ The enforcement of IPRs can give rise to the “acquisition and exploitation of technological innovations; preventing competitors from copying or closely imitating a company’s product; obtaining access to new markets; . . . avoiding wasteful investment in R&D (Research and Development) and marketing; and creating a corporate identity.”²⁵

The enforcement of IPRs will also reduce the risk of death in the world, especially in developing countries. “There is . . . a concern about the potential health and safety consequences of counterfeit pharmaceutical drugs and other products”²⁶ Polls showed that up to a quarter of medicines used in developing

¹⁶ *Id.* at 57.

¹⁷ YIJUN TIAN, RE-THINKING INTELLECTUAL PROPERTY, THE POLITICAL ECONOMY OF COPYRIGHT PROTECTION IN THE DIGITAL ERA 147 (Routledge-Cavendish 2009); see also Li Tian & Pasha Hsieh, *China’s Development of International Economic Law and WTO Legal Capacity Building*, 13 J. INT’L ECON. L. 997, 998 (2010).

¹⁸ Yong-Shik Lee et al., *The United States-Korea Free Trade Agreement: Path to Common Economic Prosperity or False Promise?*, 6 E. ASIA L. REV. 111, 139–40 (2011).

¹⁹ Ingo Selting, *FDI and International Protection of Intellectual Property*, in LEGAL ASPECTS OF FOREIGN DIRECT INVESTMENT, *supra* note 9, at 207.

²⁰ ALIKHAN & MASHELKAR, *supra* note 14, at 33.

²¹ *Id.*

²² *Id.* at 106.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ ILIAS & FERGUSON, *supra* note 6, at 3.

countries are counterfeit.²⁷ Many deaths can be prevented by combatting counterfeit and substandard medicines. According to the WHO, “[d]uring the meningitis epidemic in Niger in 1995, over 50,000 people were inoculated with fake vaccines, received as a gift from a country which thought they were safe. The exercise resulted in 2,500 deaths.”²⁸

Despite all these advantages related to the enforcement of IPRs, many developing countries still face serious challenges on implementing IPRs. These challenges are political, social, and economic.

B. Challenges and Issues Related to the Implementation of IPRs

One of the issues facing developing countries in implementing IPRs is the degree of understanding of intellectual property. The degree of IPR awareness is very low in developing countries. Generally speaking, IPRs are violated every day, because the majority of the populations are not aware of the phenomenon, or they do not understand the policies behind IPRs.²⁹ The problem of awareness can be understood in two ways. On the one hand, some consumers might not be aware that there is a violation in reproducing the work of other people.³⁰ It is very common to see traders going to China with original textiles to counterfeit them.³¹ On the other hand, the artisans usually might not know the great value in their creations; if they ignore the value of what they create, they cannot cherish them and try to protect them. For example, Kamil Idris and Hisamitsu Arai have noted in their book that:

[a]n international study found that 80 percent of students had not heard of intellectual property nor of intellectual property protection. That fact manifests itself in an almost complete lack of cyber ethics, a disrespect for the original work of others, unthinking acceptance of illegal downloading, and worst of all, an absence of a sense of the value of personal creativity. This is the sort of culture in which piracy and counterfeiting thrive.³²

While in many countries today, there is a certain degree of IPR awareness at the graduate level, some lawyers and economists still ignore the existence and/or the importance of IPRs in other countries.³³

From a social perspective, the degree of poverty is also another reason why IPRs are difficult to enforce in Africa. Poverty affects IPRs in two ways. On the one hand,

²⁷ *Substandard and Counterfeit Medicines*, WORLD HEALTH ORG. (Nov. 2003), <http://www.who.int/mediacentre/factsheets/fs275/en/> (last visited May 12, 2014) [hereinafter WHO].

²⁸ *Id.*

²⁹ See e.g., *A Summary of the Replies to the 2006 Enforcement Survey Relating to Paraguay* 16, http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130415.pdf.

³⁰ WHO, *supra* note 27.

³¹ Sosthenes Mwita, *China Moves To Curb Exportation Of Counterfeits* (Aug. 27, 2012), <http://tz.china-embassy.org/eng/media/t963557.htm>.

³² IDRIS & ARAI, *supra* note 2, at 56.

³³ *Id.* at 58.

the rate of unemployment is so high that young people engage in any type of job in order to survive.³⁴ It is very common to see people selling pirated works of artists on the street.³⁵ On the other hand, original products are sometimes too expensive to afford in most developing countries, especially generic drugs.³⁶ As far as generic drugs are concerned, “[c]ounterfeiting of medicines is a hugely lucrative business due to high demand and low production costs.”³⁷ Even when the price difference is not considerable, consumers are so used to the counterfeit that they assume that the original would be unaffordable.³⁸ Very often, much of the population knows where to get counterfeit medications despite the deadly risk related to them.³⁹ The reason behind this is because they always believe that the ones sold at the pharmacy are too expensive for them.⁴⁰

The deficiency of the judicial system is another issue. West African governments lack skills and techniques to implement and enforce IP regulations. First, there are few regulations related to IPRs in most of these countries.⁴¹ Second, the authorities face challenges in enforcing the existing regulations.⁴² The judicial system is not trained enough to hear cases related to IPRs in general, and patents and trademarks in particular, making enforcement difficult for the judges.⁴³

From political and legal perspectives, many developing countries argue that the enforcement of IPRs is not their priority; they argue that it is only the priority of developed countries, especially when it comes to enforcing the patents rights of generic drugs.⁴⁴ Most of these countries argue that the protection of pharmaceutical patents is difficult to enforce when it comes to drugs that treat life-threatening disease.⁴⁵

The adoption of the Doha Declaration in 2001 solved this issue by allowing the use of compulsory licensing to produce any drug that deals with epidemic and life

³⁴ Kingsley Ighobor, *Africa's Youth: a "Ticking Time Bomb" or an Opportunity?*, AFRICARENEWAL, May 2013, at 10, available at <http://www.un.org/africarenewal/magazine/may-2013/africa%E2%80%99s-youth-%E2%80%9Cticking-time-bomb%E2%80%9D-or-opportunity>.

³⁵ Mxolisi Nene, *Pirates of South Africa: Architects of Poverty*, GO LEGAL (Nov. 19, 2012, 11:14 PM), <http://www.golegal.co.za/crime/pirates-south-africa-architects-poverty>.

³⁶ WHO, *supra* note 27.

³⁷ *Id.*

³⁸ Elfriede Penz & Barbara Stöttinger, *Forget the "Real" Thing—Take the Copy! An Explanatory Model for the Volitional Purchase of Counterfeit Products*, 35 ADVANCES IN CONSUMER RES. 568, 572 (2005).

³⁹ Dora Akunyili, *Lessons from Nigeria: the Fight Against Counterfeit Drugs in Africa*, 51 DIABETES VOICE 41, 42 (2006).

⁴⁰ Subo Shanmuganathan, *Counterfeit Medicines*, HEALTH POVERTY ACTION (Aug. 2010), <http://www.healthpovertyaction.org/wp-content/uploads/downloads/2012/07/counterfeitBriefingfinal1.pdf>.

⁴¹ Jayashree Watal, *INTELLECTUAL PROPERTY RIGHTS IN THE WTO AND DEVELOPING COUNTRIES* 338 (Kluwer Law International 2001).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ IDRIS & ARAI, *supra* note 6, at 6.

⁴⁵ Jakkrit Kuanpoth, *Intellectual Property Protection after TRIPS: an Asian Experience, in INTERPRETING AND IMPLEMENTING THE TRIPS AGREEMENT: IS IT FAIR?* 81 (Justin Malbon & Charles Lawson eds., 2008).

threatening diseases.⁴⁶ “Compulsory licensing refers to a non-voluntary license issued by the State to a third party to perform acts that are covered by the patent’s exclusive right . . . on the condition that the license pays reasonable remuneration to the patent-holder in return.”⁴⁷ Despite these provisions, the violation of IPRs continues to occur every day. Counterfeit drugs have not yet stopped circulating in the markets in many developing countries.⁴⁸ The rights related to other IP like copyrights, name brands, and trademarks, which are not covered by the compulsory license provisions, are not enforced.⁴⁹ Meanwhile the WTO agreements, of which most of these countries are parties, “elaborate on the general obligations, civil and administrative procedures . . . special requirements related to border measures and criminal procedures.”⁵⁰ Therefore, it is conceivable to conclude that these countries are not complying with their international obligations.

Other countries, where the governments try to implement and enforce the TRIPS agreements, face some political and strategic challenges in their jurisdictions.⁵¹ Often times, the use of force to enforce these laws makes the government unpopular in most developing countries. It leads the traders to believe that their governments constitute the first obstructions to their business, and more importantly, their livelihood. Sometimes, treaty “negotiations have been accompanied by street protests alleging harmful consequences if the government were to sign on to higher levels of IPR protections.”⁵² Consequently, the governments face the difficulty of deciding between the compliance with their international obligation and domestic public opinion.

III. APPROACH OF SOLUTIONS TO SOLVE IPRS ISSUES IN WEST AFRICA

A. Solutions on National Level

The first and most important step to implementing and enforcing IPRs is establishing the political commitment of leaders in developing countries.⁵³ Lawmakers and policy makers must understand the vitality and relevance of the IPR implementation.⁵⁴ They must adapt the domestic laws and policies to the TRIPS provisions. Implementing the law is important but enforcement is even more important. “Once there is a strong commitment at the very highest level of government, it should be followed by a strategic plan in which new policies,

⁴⁶ *Id.*

⁴⁷ *Id.* at 83.

⁴⁸ Akunyili, *supra* note 39.

⁴⁹ Marshall A. Leaffer, *Protecting United States Intellectual Property Abroad: Toward A New Multilateralism*, 76 IOWA L. REV. 273, 274 (1991).

⁵⁰ ALIKHAN & MASHELKAR, *supra* note 14, at 40.

⁵¹ Fink, *supra* note 1, at 387.

⁵² *Id.*

⁵³ IDRIS & ARAI, *supra* note 2, at 98.

⁵⁴ Tian, *supra* note 17, at 120.

strategies and actions should be clearly delineated.”⁵⁵ All due diligence must be taken to create a strong mechanism to enforce the law. A strong policy will take into consideration:

- (1) “social resistance problems, such as lack of public support for IPR enforcement;
- (2) legislative problems, such as lack of strong copyright legislation;
- (3) law enforcement problems, such as inadequate public/government/administrative support;
- (4) institutional problems, such as lack of transparency of court systems, local protectionism and inadequate well-trained legal personnel;
- (5) economic problems, such as conflicts of benefits between strong copyright protection and the growth of domestic copyright industries;
- (6) public interest problem, such as conflict between strong copyright protection and effective technology transfers, and conflict between strong copyright protection and the public’s right to access information.”⁵⁶

The social and public interest problems should be addressed through a strong educational plan and communication. This is very important because people should not be incriminated for what they do not know. First, the intellectual class has to be informed about the different types of IPs. Universities, law enforcement authorities and customs agents at borders need to understand the difference between trademark and patents, especially because most of them are familiar with copyrights. As the phenomenon is becoming more serious, it will be of high importance to teach IPRs to young students at the high school levels.⁵⁷ Young students should be introduced to art and creativity, and they should be awarded for what they create. Kamil Idris and Hisamitsu Arai also agreed that “giv[ing] students awareness of their own creative potential as well as of what can be accomplished using that creativity in the modern, knowledge-based workplace”⁵⁸ is the best way to encourage and protect innovation of future generations. At the same time, by awarding the students, parents will be aware of IPRs. This plan will be set for long-term and short-term goals. The long-term goal will be to reach a certain percentage of the populations in a fixed period of time (for example 80 percent of the young generation by 2020). The short-term goal is to be able to reach the parents through their children. In this perspective, the

⁵⁵ IDRIS & ARAI, *supra* note 2, at 100.

⁵⁶ Tian, *supra* note 17, at 156.

⁵⁷ IDRIS & ARAI, *supra* note 2, at 58.

⁵⁸ *Id.* at 56.

“students’ creativity and innovation award” must be organized as a major event in which parents, celebrities, and political authorities attend. The students’ creativity and innovation award should be a national competition with different steps. The first step should be on a district level where students compete in their respective school. The second competition should be at a local level. The final competition should be on the national level. The best students should be awarded at each level of the competition. The best students on the national level should win national scholarships that will allow them to pursue their study abroad and develop their talents further. This will create a very strong awareness on the national level.

Another strategy to address the social and public interest problem is to focus on traders. The first step is to educate the traders and make them understand the economic and moral implications of the violation of IPRs because these traders are the ones that sell these products to the public. It is vital to consider the fact that the majority of these traders are not highly educated. Any communication program should be in the languages spoken by the populations (at least three to five languages should be considered). University students and young graduates should be trained to explain the IPRs to the population. The students must be recruited based on their local origin and their native languages. This will assure that the message is carried along and well understood by the population. The local people from each community and their religious leaders should be involved as well. People tend to trust their communities leaders more than outsiders. They should make clear that using someone else’s idea without their permission is a theft, which is against their morals, culture, and religion.

Another way to reach the traders is through the chamber of commerce. There should be a mandatory training at the chamber of commerce in order to reach all economic operators in those countries. Any business approval documents issued by authorities should not be renewed until the individual has completed the training.

On the institutional level, the judicial system needs to be modernized. Lawyers and judges must receive adequate training. The customs and other law enforcement must be trained to understand IP law clearly.⁵⁹ It is noteworthy to mention the role of anti-corruption law in this matter. The authorities should promote the registration of IP by avoiding expensive and long processes.⁶⁰

Corruption is a serious impediment to the law enforcement in developing countries. Therefore, corruption must be eliminated to the core in order to get a concrete result. The governments must provide institutions with technical support needed to enforce IPRs. The role of the international community is very crucial in order to get a strong result.

B. International Contribution in Enforcing the TRIPS Provisions in West Africa

As noted before, implementing and enforcing the IPR is not an easy task, and the co-operation of developed countries is necessary to reach a good result. According to Shahid Alikhan and Raghunath Mashelkar,

⁵⁹ ALIKHAN & MASHELKAR, *supra* note 14, at 158.

⁶⁰ *Id.*

[e]ven the customs services in advance countries lack the expertise to identify goods and the sophisticated methods being used by pirates and counterfeiters It is important, therefore, to encourage cooperation between right holders and customs officials, so that the former could provide the latter with information and intelligence about imports or exports of counterfeit or illegal goods.⁶¹

Meanwhile, the United States has made the enforcement of IPRs a priority in its preferential trade agreement (PTA) with developing countries.⁶² TRIPS plus programs require substantially that beneficiary countries of its PTA program have IPR enforcement programs that “reflect a standard of protection similar to that found in United States law.”⁶³ It is very obvious that many of these countries cannot meet this requirement because they lack financial and technical capabilities to do so.⁶⁴ If these countries are still struggling to implement the TRIPS agreement, requiring more will not only appear too demanding, but will also impose extreme burden. The United States and other developed countries should be realistic in the enforcement of TRIPS provisions.

The transfer of technology constitutes the hottest debate between developing countries and developed countries. The WTO agreements require developed countries to promote the transfer of technology to Least Developed Countries.⁶⁵ Developed countries have to show the world their real intention to transfer technology to developing countries.⁶⁶ The promotion of creations and innovations has to be based on the use of certain technologies, which are not available in most developing countries.⁶⁷ Sustainable development requires the transfer of technology. It is noteworthy to mention that most countries in West Africa are considered Least Developed Countries (LDCs).⁶⁸ There are different small technologies that could be

⁶¹ *Id.* at 159.

⁶² Fink, *supra* note 1, at 390 tbl 18.1.

⁶³ *Id.*

⁶⁴ *See generally id.* at 411.

The effectiveness of any approach will hinge on the nature of commitments by member countries to a specific agreement and on the political and financial resources for implementing such commitments. Technology sharing and transfer, technical assistance and capacity building, and financing of environmental initiatives are critical determinants of the economic development benefits of these approaches.

Id.

⁶⁵ ILIAS & FERGUSON, *supra* note 6, at 23.

⁶⁶ Bhagirath Lal Das, *Strengthening Developing Countries in the WTO*, THIRD WORLD NETWORK, <http://www.twinside.org.sg/title/td8.htm> (last visited May 12, 2014).

⁶⁷ JEAN-ERIC AUBERT, PROMOTING INNOVATION IN DEVELOPING COUNTRIES: A CONCEPTUAL FRAMEWORK 6, 7, 11 (World Bank Publications 2005), available at <http://info.worldbank.org/etools/docs/library/137729/0-3097AubertPaper%5B1%5D.pdf>.

⁶⁸ *See West-Africa: A UN-Sub Region Consisting of Different Countries*, ATLAS WEST-AFRICA, <http://www.atlas-westafrica.org> (last visited May 12, 2014); *see also Least Developed Countries*, NATIONS ONLINE, http://www.nationsonline.org/oneworld/least_developed_countries.htm (last visited May 12, 2014).

transferred to those countries in order to encourage innovation and improve their economy. Most of the U.S. agencies like the United States Trade Representative (USTR), United States International Trade Commission (USITC), National Intellectual Property Law Enforcement (NIPLE), and Strategy Targeting Organized Piracy are all focused on the enforcement of IPRs.⁶⁹ The transfer of technology does not seem like a priority in the U.S.'s agenda. As it is important for developing countries to comply with their international obligations, developed countries must show the good will to transfer technology. This will address the concern of developing countries.

IV. CONCLUSION

The implementation and enforcement of the TRIPS agreement continues to be a big challenge in most West African countries, impeding the investment flow from developed countries to developing countries. On the one hand, the political commitment, *inter alia*, constitutes a major issue for the implementation and enforcement of IPRs in developing countries. On the other hand, some TRIPS and TRIPS plus provisions seem not to take into consideration the complex political, social, and economic realities of developing countries. Some scholars are still questioning the fairness of the TRIPS agreement.⁷⁰ According to Professor Xu, "making rules for the protection of intellectual property rights (IPRs) involves finding a balance between the interests of right-holders and right-users. The balance is presently skewed unduly in favour of right-holders."⁷¹ It is important that the WTO addresses the imbalance between the interests of the right-holders and those of people in developing countries. It is also important for LDCs to understand that it is in their favor to implement and enforce IPRs. The protection of IPRs will create incentives for foreign investments, encourage the transfer of technology, and improve the economy.

Finally, developed countries should provide technical assistance and logistics to developing countries in order to obtain a concrete result. Developed countries should keep their promise relating to the transfer of technology, rather than promoting a false utopia.

⁶⁹ ILIAS & FERGUSSON, *supra* note 6, at 48–54.

⁷⁰ Malbon, *supra* note 45, at 3.

⁷¹ *Id.*